

REMARKS

The present invention relates to transgenic plant cells and plants having a decreased activity of a GBSSI protein and a decreased activity of a BE protein, in particular of a BEI protein, and to means and processes for their production. Plant cells and plants of this type can synthesize a modified starch which has an amylopectin content of at least 90%, and in comparison to starch from corresponding plants of the waxy phenotype, an increased phosphate content and/or a decreased gelatinization temperature. The instant invention therefore further concerns the starch synthesized from the plant cells and plants according to the invention, and to processes for the production of this starch. The present invention further relates to the use of certain nucleic acid molecules for the production of such plants.

Applicants have been asked to elect the invention of Group I, claims 1-24 and 29, drawn to a process of plant transformation with nucleic acids which reduce expression of GBSSI and BE proteins, the resultant transformed plants cells and plants, and a method for their use to obtain altered starch, or the invention of Group II, claims 25-28, drawn to isolated starch.

In response, Applicants elect the invention of Group I, claims 1-24 and 29, with traverse. Applicants moreover reserve the right to file divisional application(s) directed to non-elected subject matter.

Applicants respectfully urge that the Restriction Requirement is improper, as it does not establish that searching all the inventions would constitute an undue burden to the Patent Office. Moreover, Applicants urge that the Restriction Requirement is contrary to public policy. Accordingly, Applicants submit that the Restriction Requirement is improper and should be withdrawn or at least modified.

The MPEP lists two criteria for a proper restriction requirement. First, the invention must be independent or distinct. MPEP § 803. Second, searching the additional invention must constitute an undue burden on the examiner if restriction is not required. *Id.* The MPEP directs the examiner to search and examine an entire application “[i]f the search and examination of an entire application can be made without serious burden, ... even though it includes claims to distinct or independent inventions.” *Id.*

Applicants urge that the Restriction Requirement does not meet the second of these criteria as the search for each of the two groups overlaps. One of the reasons for this is that the subject matter of Group I, i.e. the process for plant transformation and the resultant transformed plant cells and their use to obtain altered starch, is utilized in the production of the isolated starch of Group II.

Further, it is respectfully urged that the cost of prosecuting and maintaining more than one patent is unreasonable in view of the fact that the two groups are so closely related. Also, the public is inconvenienced as they will not know whether or not Applicants will file a divisional application to the remaining subject matter. Accordingly, the public will not know if they can practice the remaining invention without infringing future patent application.

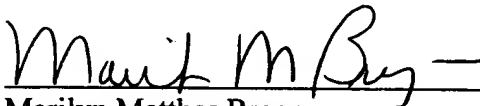
Accordingly, in view of the foregoing, reconsideration and modification of this restriction requirement is requested and an early action on the merits is earnestly solicited.

It is believed that no fee should be required by reason of the instant submission.
However, if any fee is required please, or if any over payment has been made, please charge or
credit Deposit Account No. 50-0320.

Respectfully submitted,

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